

CLEAN, RENEWABLE, AND EFFICIENT ENERGY ACT (EXCERPT)
Act 295 of 2008

PART 2.
ENERGY STANDARDS

SUBPART A.
RENEWABLE ENERGY

460.1021 Electric providers; regulation of rates by commission; applicability of section; filing of proposed renewable energy plan; requirements; establishment of nonvolumetric mechanism; revenue recovery mechanism; agreement with customer to participate in commission-approved voluntary renewable energy program; reserve funds; contested case hearing on proposed plan; approval; determination; initial approval; review; amendment; rejection of proposed plan or amendment.

Sec. 21. (1) This section applies only to electric providers whose rates are regulated by the commission.

(2) Each electric provider shall file a proposed renewable energy plan with the commission within 90 days after the commission issues a temporary order under section 171. The proposed plan shall meet all of the following requirements:

(a) Describe how the electric provider will meet the renewable energy standards.

(b) Specify whether the number of megawatt hours of electricity used in the calculation of the renewable energy credit portfolio will be weather-normalized or based on the average number of megawatt hours of electricity sold by the electric provider annually during the previous 3 years to retail customers in this state. Once the plan is approved by the commission, this option shall not be changed.

(c) Include the expected incremental cost of compliance with the renewable energy standards for a 20-year period beginning when the plan is approved by the commission.

(d) For an electric provider that had 1,000,000 or more retail customers in this state on January 1, 2008, describe the bidding process to be used by the electric provider under section 33. The description shall include measures to be employed in the preparation of requests for proposals and the handling and evaluation of proposals received to ensure that any bidder that is an affiliate of the electric utility is not afforded a competitive advantage over any other bidder and that each bidder, including any bidder that is an affiliate of the electric provider, is treated in a fair and nondiscriminatory manner.

(3) The proposed plan shall establish a nonvolumetric mechanism for the recovery of the incremental costs of compliance within the electric provider's customer rates. The revenue recovery mechanism shall not result in rate impacts that exceed the monthly maximum retail rate impacts specified under section 45. The revenue recovery mechanism is subject to adjustment under sections 47(4) and 49. A customer participating in a commission-approved voluntary renewable energy program under an agreement in effect on the effective date of this act shall not incur charges under the revenue recovery mechanism unless the charges under the revenue recovery mechanism exceed the charges the customer is incurring for the voluntary renewable energy program. In that case, the customer shall only incur the difference between the charge assessed under the revenue recovery mechanism and the charges the customer is incurring for the voluntary renewable energy program. The limitation on charges applies only during the term of the agreement, not including automatic agreement renewals, or until 1 year after the effective date of this act, whichever is later. Before entering an agreement with a customer to participate in a commission-approved voluntary renewable energy program and before the last automatic monthly renewal of such an agreement that will occur less than 1 year after the effective date of this act, an electric provider shall notify the customer that the customer will be responsible for the full applicable charges under the revenue recovery mechanism and under the voluntary renewable energy program as provided under this subsection.

(4) If proposed by the electric provider in its proposed plan, the revenue recovery mechanism shall result in an accumulation of reserve funds in advance of expenditure and the creation of a regulatory liability that accrues interest at the average short-term borrowing rate available to the electric provider during the appropriate period. If proposed by the electric provider in its proposed plan, the commission shall establish a minimum balance of accumulated reserve funds for the purposes of section 47(4).

(5) The commission shall conduct a contested case hearing on the proposed plan filed under subsection (2), pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. If a renewable energy generator files a petition to intervene in the contested case in the manner prescribed by the commission's rules for interventions generally, the commission shall grant the petition. Subject to subsections (6) and (10), after the hearing and within 90 days after the proposed plan is filed with the commission, the

commission shall approve, with any changes consented to by the electric provider, or reject the plan.

(6) The commission shall not approve an electric provider's plan unless the commission determines both of the following:

(a) That the plan is reasonable and prudent. In making this determination, the commission shall take into consideration projected costs and whether or not projected costs included in prior plans were exceeded.

(b) That the life-cycle cost of renewable energy acquired or generated under the plan less the projected life-cycle net savings associated with the provider's energy optimization plan does not exceed the expected life-cycle cost of electricity generated by a new conventional coal-fired facility. In determining the expected life-cycle cost of electricity generated by a new conventional coal-fired facility, the commission shall consider data from this state and the states of Ohio, Indiana, Illinois, Wisconsin, and Minnesota, including, if applicable, the life-cycle costs of the renewable energy system and new conventional coal-fired facilities. When determining the life-cycle costs of the renewable energy system and new conventional coal-fired facilities, the commission shall use a methodology that includes, but is not limited to, consideration of the value of energy, capacity, and ancillary services. The commission shall also consider other costs such as transmission, economic benefits, and environmental costs, including, but not limited to, greenhouse gas constraints or taxes. In performing its assessment, the commission may utilize other available data, including national or regional reports and data published by federal or state governmental agencies, industry associations, and consumer groups.

(7) An electric provider shall not begin recovery of the incremental costs of compliance within its rates until the commission has approved its proposed plan.

(8) Every 2 years after initial approval of a plan under subsection (5), the commission shall review the plan. The commission shall conduct a contested case hearing on the plan pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The annual renewable cost reconciliation under section 49 for that year may be joined with the overall plan review in the same contested case hearing. Subject to subsections (6) and (10), after the hearing, the commission shall approve, with any changes consented to by the electric provider, or reject the plan and any proposed amendments to the plan.

(9) If an electric provider proposes to amend its plan at a time other than during the biennial review process under subsection (8), the electric provider shall file the proposed amendment with the commission. If the proposed amendment would modify the revenue recovery mechanism, the commission shall conduct a contested case hearing on the amendment pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The annual renewable cost reconciliation under section 49 may be joined with the plan amendment in the same contested case proceeding. Subject to subsections (6) and (10), after the hearing and within 90 days after the amendment is filed, the commission shall approve, with any changes consented to by the electric provider, or reject the plan and the proposed amendment or amendments to the plan.

(10) If the commission rejects a proposed plan or amendment under this section, the commission shall explain in writing the reasons for its determination.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides:

"Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

In subsection (2), the reference to "section 171" evidently should read "section 191".

460.1023 Alternative electric suppliers and cooperative electric utilities; applicability of section; filing of proposed renewable energy plan; requirements; public comment; initial approval; review; amendment; rejection of proposed plan or amendment.

Sec. 23. (1) This section applies only to alternative electric suppliers and cooperative electric utilities that have elected to become member-regulated under the electric cooperative member-regulation act, 2008 PA 167, MCL 460.31 to 460.39.

(2) Each alternative electric supplier or cooperative electric utility shall file a proposed renewable energy plan with the commission within 90 days or 120 days, respectively, after the commission issues a temporary order under section 171. The proposed plan shall meet all of the following requirements:

(a) Describe how the electric provider will meet the renewable energy standards.

(b) Specify whether the number of megawatt hours of electricity used in the calculation of the renewable energy portfolio will be weather-normalized or based on the average number of megawatt hours of electricity sold by the electric provider annually during the previous 3 years to retail customers in this state. Once the plan is approved by the commission, this option shall not be changed.

(3) The commission shall provide an opportunity for public comment on the proposed plan filed under subsection (2). After the opportunity for public comment and within 90 days after the proposed plan is filed

with the commission, the commission shall approve, with any changes consented to by the electric provider, or reject the plan.

(4) Every 2 years after initial approval of a plan under subsection (3), the commission shall review the plan. The commission shall provide an opportunity for public comment on the plan. After the opportunity for public comment, the commission shall approve, with any changes consented to by the electric provider, or reject any proposed amendments to the plan.

(5) If an electric provider proposes to amend its plan at a time other than during the biennial review process under subsection (4), the electric provider shall file the proposed amendment with the commission. The commission shall provide an opportunity for public comment on the amendment. After the opportunity for public comment and within 90 days after the amendment is filed, the commission shall approve, with any changes consented to by the electric provider, or reject the amendment.

(6) If the commission rejects a proposed plan or amendment under this section, the commission shall explain in writing the reasons for its determination.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides:

"Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

In subsection (2), the reference to "section 171" evidently should read "section 191".

460.1025 Municipally-owned electric utilities; applicability of section; filing of renewable energy plan; requirements; public comment; initial approval; review; amendment; determination of noncompliance.

Sec. 25. (1) This section applies only to municipally-owned electric utilities.

(2) Each electric provider shall file a proposed renewable energy plan with the commission within 120 days after the commission issues a temporary order under section 171. Two or more electric providers that each serve fewer than 15,000 customers may file jointly. The proposed plan shall meet all of the following requirements:

(a) Describe how the provider will meet the renewable energy standards.

(b) Specify whether the number of megawatt hours of electricity used in the calculation of the renewable energy credit portfolio will be weather-normalized or based on the average number of megawatt hours of electricity sold by the electric provider annually during the previous 3 years to retail customers in this state. Once the commission determines that the proposed plan complies with this act, this option shall not be changed.

(c) Include the expected incremental cost of compliance with the renewable energy standards.

(d) Describe the manner in which the provider will allocate costs.

(3) Subject to subsection (6), the commission shall provide an opportunity for public comment on the proposed plan filed under subsection (2). After the applicable opportunity for public comment and within 90 days after the proposed plan is filed with the commission, the commission shall determine whether the proposed plan complies with this act.

(4) Every 2 years after the commission initially determines under subsection (3) that a renewable energy plan complies with this act, the commission shall review the plan. Subject to subsection (6), the commission shall provide an opportunity for public comment on the plan. After the applicable opportunity for public comment, the commission shall determine whether any amendment to the plan proposed by the provider complies with this act. The proposed amendment is adopted if the commission determines that it complies with this act.

(5) If a provider proposes to amend its renewable energy plan at a time other than during the biennial review process under subsection (4), the provider shall file the proposed amendment with the commission. Subject to subsection (6), the commission shall provide an opportunity for public comment on the amendment. After the applicable opportunity for public comment and within 90 days after the amendment is filed, the commission shall determine whether the proposed amendment to the plan complies with this act. The proposed amendment is adopted if the commission determines that it complies with this act.

(6) The commission need not provide an opportunity for public comment under subsection (3), (4), or (5) if the governing body of the provider has already provided an opportunity for public comment and filed the comments with the commission.

(7) If the commission determines that a proposed plan or amendment under this section does not comply with this act, the commission shall explain in writing the reasons for its determination.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides:

"Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

In subsection (2), the reference to "section 171" evidently should read "section 191".

460.1027 Electric utility with 1,000,000 or more retail customers; renewable energy capacity portfolio; renewable energy credit portfolio; standards; substitution of energy optimization credits, advanced cleaner energy credits, or combination; rates.

Sec. 27. (1) Subject to sections 31 and 45, and in addition to the requirements of subsection (3), an electric provider that is an electric utility with 1,000,000 or more retail customers in this state as of January 1, 2008 shall achieve a renewable energy capacity portfolio of not less than the following:

(a) For an electric provider with more than 1,000,000 but less than 2,000,000 retail electric customers in this state on January 1, 2008, a renewable energy capacity portfolio of 200 megawatts by December 31, 2013 and 500 megawatts by December 31, 2015.

(b) For an electric provider with more than 2,000,000 retail electric customers in this state on January 1, 2008, a renewable energy capacity portfolio of 300 megawatts by December 31, 2013 and 600 megawatts by December 31, 2015.

(2) An electric provider's renewable energy capacity portfolio shall be calculated by adding the following:

(a) The nameplate capacity in megawatts of renewable energy systems owned by the electric provider that were not in commercial operation before the effective date of this act.

(b) The capacity in megawatts of renewable energy that the electric provider is entitled to purchase under contracts that were not in effect before the effective date of this act.

(3) Subject to sections 31 and 45, an electric provider shall achieve a renewable energy credit portfolio as follows:

(a) In 2012, 2013, 2014, and 2015, a renewable energy credit portfolio based on the sum of the following:

(i) The number of renewable energy credits from electricity generated in the 1-year period preceding the effective date of this act that would have been transferred to the electric provider pursuant to section 35(1), if this act had been in effect during that 1-year period.

(ii) The number of renewable energy credits equal to the number of megawatt hours of electricity produced or obtained by the electric provider in the 1-year period preceding the effective date of this act from renewable energy systems for which recovery in electric rates was approved on the effective date of this act.

(iii) Renewable energy credits in an amount calculated as follows:

(A) Taking into account the number of renewable energy credits under subparagraphs (i) and (ii), determine the number of additional renewable energy credits that the electric provider would need to reach a 10% renewable energy portfolio in that year.

(B) Multiply the number under sub-subparagraph (A) by 20% for 2012, 33% for 2013, 50% for 2014, and 100% for 2015.

(b) In 2016 and each year thereafter, maintain a renewable energy credit portfolio that consists of at least the same number of renewable energy credits as were required in 2015 under subdivision (a).

(4) An electric provider's renewable energy credit portfolio shall be calculated as follows:

(a) Determine the number of renewable energy credits used to comply with this subpart during the applicable year.

(b) Divide by 1 of the following at the option of the electric provider as specified in its renewable energy plan:

(i) The number of weather-normalized megawatt hours of electricity sold by the electric provider during the previous year to retail customers in this state.

(ii) The average number of megawatt hours of electricity sold by the electric provider annually during the previous 3 years to retail customers in this state.

(c) Multiply the quotient under subdivision (b) by 100.

(5) Subject to subsection (6), each electric provider shall meet the renewable energy credit standards with renewable energy credits obtained by 1 or more of the following means:

(a) Generating electricity from renewable energy systems for sale to retail customers.

(b) Purchasing or otherwise acquiring renewable energy credits with or without the associated renewable energy.

(6) An electric provider may substitute energy optimization credits, advanced cleaner energy credits with or without the associated advanced cleaner energy, or a combination thereof for renewable energy credits otherwise required to meet the renewable energy credit standards if the substitution is approved by the commission. However, commission approval is not required to substitute advanced cleaner energy from industrial cogeneration for renewable energy credits. The commission shall not approve a substitution unless the commission determines that the substitution is cost-effective compared to other sources of renewable energy credits and, if the substitution involves advanced cleaner energy credits, that the advanced cleaner

energy system provides carbon dioxide emissions benefits. In determining whether the substitution of advanced cleaner energy credits is cost-effective, the commission shall include as part of the costs of the system the environmental costs attributed to the advanced cleaner energy system, including the costs of environmental control equipment or greenhouse gas constraints or taxes. The commission's determinations shall be made after a contested case hearing that includes consultation with the department of environmental quality on the issue of carbon dioxide emissions benefits, if relevant, and environmental costs.

(7) Under subsection (6), energy optimization credits, advanced cleaner energy credits, or a combination thereof shall not be used by a provider to meet more than 10% of the renewable energy credit standards. Advanced cleaner energy from advanced cleaner energy systems in existence on January 1, 2008 shall not be used by a provider to meet more than 70% of this 10% limit. This 10% limit does not apply to advanced cleaner energy credits from plasma arc gasification.

(8) Substitutions under subsection (6) shall be made at the following rates per renewable energy credit:

(a) One energy optimization credit.

(b) One advanced cleaner energy credit from plasma arc gasification or industrial cogeneration.

(c) Ten advanced cleaner energy credits other than from plasma arc gasification or industrial cogeneration.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1029 Renewable energy system location; requirements.

Sec. 29. (1) Subject to subsection (2), a renewable energy system that is the source of renewable energy credits used to satisfy the renewable energy standards shall be either located outside of this state in the retail electric customer service territory of any provider that is not an alternative electric supplier or located anywhere in this state. For the purposes of this subsection, a retail electric customer service territory shall be considered to be the territory recognized by the commission on January 1, 2008 and any expansion of retail electric customer service territory recognized by the commission after January 1, 2008 under 1939 PA 3, MCL 460.1 to 460.10cc. The commission may also expand a service territory for the purposes of this subsection if a lack of transmission lines limits the ability to obtain sufficient renewable energy from renewable energy systems that meet the location requirement of this subsection.

(2) The renewable energy system location requirements in subsection (1) do not apply if 1 or more of the following requirements are met:

(a) The renewable energy system is a wind energy conversion system and the electricity generated by the wind energy system, or the renewable energy credits associated with that electricity, is being purchased under a contract in effect on January 1, 2008. If the electricity and associated renewable energy credits purchased under such a contract are used by an electric provider to meet renewable energy requirements established after January 1, 2008 by the legislature of the state in which the wind energy conversion system is located, the electric provider may, for the purpose of meeting the renewable energy credit standard under this act, obtain, by any means authorized under section 27, up to the same number of replacement renewable energy credits from any other wind energy conversion systems located in that state. This subdivision shall not be utilized by an alternative electric supplier unless the alternative electric supplier was licensed in this state on January 1, 2008. Renewable energy credits from a renewable energy system under a contract with an alternative electric supplier under this subdivision shall not be used by another electric provider to meet its requirements under this part.

(b) The renewable energy system is a wind energy conversion system that was under construction or operational and owned by an electric provider on January 1, 2008. This subdivision shall not be utilized by an alternative electric supplier.

(c) The renewable energy system is a wind energy conversion system that includes multiple wind turbines, at least 1 of the wind turbines meets the location requirements of this section, and the remaining wind turbines are within 15 miles of a wind turbine that is part of that wind energy conversion system and that meets the location requirements of this section.

(d) Before January 1, 2008, an electric provider serving not more than 75,000 retail electric customers in this state filed an application for a certificate of authority for the renewable energy system with a state regulatory commission in another state that is also served by the electric provider. However, renewable energy credits shall not be granted under this subdivision for electricity generated using more than 10.0 megawatts of nameplate capacity of the renewable energy system.

(e) Electricity generated from the renewable energy system is sold by a not-for-profit entity located in Indiana or Wisconsin to a municipally-owned electric utility in this state or cooperative electric utility in this state under a contract in effect on January 1, 2008, and the electricity is not being used to meet another state's

standard for renewable energy.

(f) Electricity generated from the renewable energy system is sold by a not-for-profit entity located in Ohio to a municipally-owned electric utility in this state under a contract approved by resolution of the governing body of the municipally-owned electric utility by January 1, 2008, and the electricity is not being used to meet another state's standard for renewable energy. However, renewable energy credits shall not be granted for electricity generated using more than 13.4 megawatts of nameplate capacity of the renewable energy system.

(g) All of the following requirements are met:

(i) The renewable energy system is a wind energy system, is interconnected to the electric provider's transmission system, and is located in a state in which the electric provider has service territory.

(ii) The electric provider competitively bid any contract for engineering, procurement, or construction of the renewable energy system, if the electric provider owns the renewable energy system, or for purchase of the renewable energy and associated renewable energy credits from the renewable energy system, if the provider does not own the renewable energy system, in a process open to renewable energy systems sited in this state.

(iii) The renewable energy credits from the renewable energy system are only used by that electric provider to meet the renewable energy standard.

(iv) The electric provider is not an alternative electric supplier.

(3) Advanced cleaner energy systems that are the source of the advanced cleaner energy credits used under section 27 shall be either located outside this state in the service territory of any electric provider that is not an alternative electric supplier or located anywhere in this state.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1031 Extensions of 2015 renewable energy standard deadline; establishment of revised renewable energy standard; compliance; "good cause" defined.

Sec. 31. (1) Upon petition by an electric provider, the commission may for good cause grant 2 extensions of the 2015 renewable energy standard deadline under section 27. Each extension shall be for up to 1 year.

(2) If 2 extensions of the 2015 renewable energy standard deadline have been granted to an electric provider under subsection (1), upon subsequent petition by the electric provider at least 3 months before the expiration of the second extended deadline, the commission shall, after consideration of prior extension requests under this section and for good cause, establish a revised renewable energy standard attainable by the electric provider. If the electric provider achieves the revised renewable energy standard, the provider is considered to be in compliance with this subpart.

(3) An electric provider that makes a good faith effort to spend the full amount of incremental costs of compliance as outlined in its approved renewable energy plan and that complies with its approved plan, subject to any approved extensions or revisions, shall be considered to be in compliance with this subpart.

(4) As used in this section, "good cause" includes, but is not limited to, the electric provider's inability, as determined by the commission, to meet a renewable energy standard because of a renewable energy system feasibility limitation including, but not limited to, any of the following:

(a) Renewable energy system site requirements, zoning, siting, land use issues, permits, including environmental permits, any certificate of need process under section 6s of 1939 PA 3, MCL 460.6s, or any other necessary governmental approvals that effectively limit availability of renewable energy systems, if the electric provider exercised reasonable diligence in attempting to secure the necessary governmental approvals. For purposes of this subdivision, "reasonable diligence" includes, but is not limited to, submitting timely applications for the necessary governmental approvals and making good faith efforts to ensure that the applications are administratively complete and technically sufficient.

(b) Equipment cost or availability issues including electrical equipment or renewable energy system component shortages or high costs that effectively limit availability of renewable energy systems.

(c) Cost, availability, or time requirements for electric transmission and interconnection.

(d) Projected or actual unfavorable electric system reliability or operational impacts.

(e) Labor shortages that effectively limit availability of renewable energy systems.

(f) An order of a court of competent jurisdiction that effectively limits the availability of renewable energy systems.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1033 Electric provider with 1,000,000 or more retail customers; obtaining renewable energy credits to meet standard in 2015; exception; submission of contract for approval.

Sec. 33. (1) Subject to subsections (2) and (3), an electric provider that had 1,000,000 or more retail customers in this state on January 1, 2008 shall obtain the renewable energy credits that are necessary to meet the renewable energy credit standard in 2015 and thereafter as follows:

(a) At the electric provider's option, up to but no more than 50% of the renewable energy credits shall be from any of the following:

(i) Renewable energy systems that were developed by and are owned by the electric provider. An electric provider shall competitively bid any contract for engineering, procurement, or construction of any new renewable energy systems described in this subdivision. However, an electric provider may consider unsolicited proposals presented to it by a renewable energy system developer outside of a competitive bid process. If the provider determines that such an unsolicited proposal provides opportunities that may not otherwise be available or commercially practical, the provider may enter into a contract with the developer.

(ii) Renewable energy systems that were developed by 1 or more third parties pursuant to a contract with the electric provider under which the ownership of the renewable energy system may be transferred to the electric provider, but only after the renewable energy system begins commercial operation. Any such contract shall be executed after a competitive bidding process conducted pursuant to guidelines issued by the commission. However, an electric provider may consider unsolicited proposals presented to it by a renewable energy system developer outside of a competitive bid process. If the provider determines that such an unsolicited proposal provides opportunities that may not otherwise be available or commercially practical, the provider may enter into a contract with the developer. An affiliate of the electric provider may submit a proposal in response to a request for proposals, subject to the code of conduct under section 10a(4) of 1939 PA 3, MCL 460.10a, and the sanctions for violation of the code under section 10c of 1939 PA 3, MCL 460.10c.

(b) At least 50% of the renewable energy credits shall be from renewable energy contracts that do not require transfer of ownership of the applicable renewable energy system to the electric provider or from contracts for the purchase of renewable energy credits without the associated renewable energy. A renewable energy contract or contract for the purchase of renewable energy credits under this subdivision shall be executed after a competitive bidding process conducted pursuant to guidelines issued by the commission. However, an electric provider may consider unsolicited proposals presented to it outside of a competitive bid process by a renewable energy system developer that is not affiliated with the electric provider. If the provider determines that such an unsolicited proposal provides opportunities that may not otherwise be available or commercially practical, the provider may enter into a contract with the developer. The contract is subject to review and approval by the commission under section 21. An electric provider or its affiliate may not submit a proposal in response to its own request for proposals under this subdivision. If an electric provider selects a bid other than the lowest price conforming bid from a qualified bidder, the electric provider shall promptly notify the commission. The commission shall determine in the manner provided under section 37 whether the electric provider had good cause for selecting that bid. If the commission determines that the electric provider did not have good cause, the commission shall disapprove the contract.

(2) Subsection (1) does not apply to either of the following:

(a) Renewable energy credits that are transferred to the electric provider pursuant to section 35(1).

(b) Renewable energy credits that are produced or obtained by the electric provider from renewable energy systems for which recovery in electric rates was approved as of the effective date of this act, including renewable energy credits resulting from biomass co-firing of electric generation facilities in existence on the effective date of this act, except to the extent the number of megawatt hours of electricity annually generated by biomass co-firing exceeds the number of megawatt hours generated during the 1-year period immediately preceding the effective date of this act.

(3) An electric provider shall submit a contract entered into pursuant to subsection (1) to the commission for review and approval. If the commission approves the contract, it shall be considered to be consistent with the electric provider's renewable energy plan. The commission shall not approve a contract based on an unsolicited proposal unless the commission determines that the unsolicited proposal provides opportunities that may not otherwise be available or commercially practical.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1035 Resale of renewable energy under PURPA; investor-owned electric utility with less than 20,000 customers, a municipally-owned electric utility, or cooperative electric utility;

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resale under power purchase agreement or existing agreements; determination of number of renewable energy credits.

Sec. 35. (1) If an electric provider obtains renewable energy for resale to retail or wholesale customers under an agreement under PURPA, ownership of the associated renewable energy credits shall be as provided by the PURPA agreement. If the PURPA agreement does not provide for ownership of the renewable energy credits, then:

(a) Except to the extent that a separate agreement governs under subdivision (b), for the duration of the PURPA agreement, for every 5 renewable energy credits associated with the renewable energy, ownership of 4 of the renewable energy credits is transferred to the electric provider with the renewable energy, and ownership of 1 renewable energy credit remains with the qualifying small power production facility.

(b) If a separate agreement in effect on January 1, 2008 provides for the ownership of the renewable attributes of the generated electricity, the separate agreement shall govern until January 1, 2013 or until expiration of the separate agreement, whichever occurs first.

(2) If an investor-owned electric utility with less than 20,000 customers, a municipally-owned electric utility, or cooperative electric utility obtains all or substantially all of its electricity for resale under a power purchase agreement or agreements in existence on the effective date of this act, ownership of any associated renewable energy credits shall be considered to be transferred to the electric provider purchasing the electricity. The number of renewable energy credits associated with the purchased electricity shall be determined by multiplying the total number of renewable energy credits associated with the total power supply of the seller during the term of the agreement by a fraction, the numerator of which is the amount of energy purchased under the agreement or agreements and the denominator of which is the total power supply of the seller during the term of the agreement. This subsection does not apply unless 1 or more of the following occur:

(a) The seller and the electric provider purchasing the electricity agree that this subsection applies.

(b) For a seller that is an investor-owned electric utility whose rates are regulated by the commission, the commission reduces the number of renewable energy credits required under the renewable energy credit standard for the seller by the number of renewable energy credits to be transferred to the electric provider purchasing the electricity under this subsection.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1037 Renewable energy contract without associated renewable energy; determination of compliance with retail rate impact limits.

Sec. 37. If, after the effective date of this act, an electric provider whose rates are regulated by the commission enters a renewable energy contract or a contract to purchase renewable energy credits without the associated renewable energy, the commission shall determine whether the contract provides reasonable and prudent terms and conditions and complies with the retail rate impact limits under section 45. In making this determination, the commission shall consider the contract price and term. If the contract is a renewable energy contract, the commission shall also consider at least all of the following:

(a) The cost to the electric provider and its customers of the impacts of accounting treatment of debt and associated equity requirements imputed by credit rating agencies and lenders attributable to the renewable energy contract. The commission shall use standard rating agency, lender, and accounting practices for electric utilities in determining these costs, unless the impacts for the electric provider are known.

(b) Subject to section 45, the life-cycle cost of the renewable energy contract to the electric provider and customers including costs, after expiration of the renewable energy contract, of maintaining the same renewable energy output in megawatt hours, whether by purchases from the marketplace, by extension or renewal of the renewable energy contract, or by the electric provider purchasing the renewable energy system and continuing its operation.

(c) Electric provider and customer price and cost risks if the renewable energy systems supporting the renewable energy contract move from contracted pricing to market-based pricing after expiration of the renewable energy contract.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1039 Granting 1 renewable energy credit for each megawatt hour of electricity generated from renewable energy system; conditions; granting Michigan incentive renewable energy

credits; expiration.

Sec. 39. (1) Except as otherwise provided in section 35(1), 1 renewable energy credit shall be granted to the owner of a renewable energy system for each megawatt hour of electricity generated from the renewable energy system, subject to all of the following:

(a) If a renewable energy system uses both a renewable energy resource and a nonrenewable energy resource to generate electricity, the number of renewable energy credits granted shall be based on the percentage of the electricity generated from the renewable energy resource.

(b) A renewable energy credit shall not be granted for renewable energy generated from a municipal solid waste incinerator to the extent that the renewable energy was generated by operating the incinerator in excess of the greater of the following, as applicable:

(i) The incinerator's nameplate capacity rating on January 1, 2008.

(ii) If the incinerator is expanded after the effective date of this act to an approximate continuous design rated capacity of not more than 950 tons per day pursuant to the terms of a final request for proposals issued not later than October 1986, the nameplate capacity rating required to accommodate that expansion.

(c) A renewable energy credit shall not be granted for renewable energy the renewable attributes of which are used by an electric provider in a commission-approved voluntary renewable energy program.

(2) Subject to subsection (3), the following additional renewable energy credits, to be known as Michigan incentive renewable energy credits, shall be granted under the following circumstances:

(a) 2 renewable energy credits for each megawatt hour of electricity from solar power.

(b) 1/5 renewable energy credit for each megawatt hour of electricity generated from a renewable energy system, other than wind, at peak demand time as determined by the commission.

(c) 1/5 renewable energy credit for each megawatt hour of electricity generated from a renewable energy system during off-peak hours, stored using advanced electric storage technology or a hydroelectric pumped storage facility, and used during peak hours. However, the number of renewable energy credits shall be calculated based on the number of megawatt hours of renewable energy used to charge the advanced electric storage technology or fill the pumped storage facility, not the number of megawatt hours actually discharged or generated by discharge from the advanced energy storage facility or pumped storage facility.

(d) 1/10 renewable energy credit for each megawatt hour of electricity generated from a renewable energy system constructed using equipment made in this state as determined by the commission. The additional credit under this subdivision is available for the first 3 years after the renewable energy system first produces electricity on a commercial basis.

(e) 1/10 renewable energy credit for each megawatt hour of electricity from a renewable energy system constructed using a workforce composed of residents of this state as determined by the commission. The additional credit under this subdivision is available for the first 3 years after the renewable energy system first produces electricity on a commercial basis.

(3) A renewable energy credit expires at the earliest of the following times:

(a) When used by an electric provider to comply with its renewable energy credit standard.

(b) When substituted for an energy optimization credit under section 77.

(c) Three years after the end of the month in which the renewable energy credit was generated.

(4) A renewable energy credit associated with renewable energy generated within 120 days after the start of a calendar year may be used to satisfy the prior year's renewable energy standard and expires when so used.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1041 Renewable energy credits; trade, sale, or transfer; demonstration of compliance; establishment of energy credit certification and tracking program; use not required in state.

Sec. 41. (1) Renewable energy credits may be traded, sold, or otherwise transferred.

(2) An electric provider is responsible for demonstrating that a renewable energy credit used to comply with a renewable energy credit standard is derived from a renewable energy source and that the electric provider has not previously used or traded, sold, or otherwise transferred the renewable energy credit.

(3) The same renewable energy credit may be used by an electric provider to comply with both a federal standard for renewable energy and the renewable energy standard under this subpart. An electric provider that uses a renewable energy credit to comply with another state's standard for renewable energy shall not use the same renewable energy credit to comply with the renewable energy credit standard under this subpart.

(4) The commission shall establish a renewable energy credit certification and tracking program. The certification and tracking program may be contracted to and performed by a third party through a system of

competitive bidding. The program shall include all of the following:

(a) A process to certify renewable energy systems, including all existing renewable energy systems operating on the effective date of this act, as eligible to receive renewable energy credits.

(b) A process for verifying that the operator of a renewable energy system is in compliance with state and federal law applicable to the operation of the renewable energy system when certification is granted. If a renewable energy system becomes noncompliant with state or federal law, renewable energy credits shall not be granted for renewable energy generated by that renewable energy system during the period of noncompliance.

(c) A method for determining the date on which a renewable energy credit is generated and valid for transfer.

(d) A method for transferring renewable energy credits.

(e) A method for ensuring that each renewable energy credit transferred under this act is properly accounted for under this act.

(f) If the system is established by the commission, allowance for issuance, transfer, and use of renewable energy credits in electronic form.

(g) A method for ensuring that both a renewable energy credit and an advanced cleaner energy credit are not awarded for the same megawatt hour of energy.

(5) A renewable energy credit purchased from a renewable energy system in this state is not required to be used in this state.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1043 Granting 1 advanced cleaner energy credit for each megawatt hour of electricity generated from advanced cleaner energy system; expiration; trade, sale, or transfer; establishment of advanced cleaner energy credit certification and tracking program; use not required in state.

Sec. 43. (1) One advanced cleaner energy credit shall be granted to the owner of an advanced cleaner energy system for each megawatt hour of electricity generated from the advanced cleaner energy system. However, if an advanced cleaner energy system uses both an advanced cleaner energy technology and an energy technology that is not an advanced cleaner energy technology to generate electricity, the number of advanced cleaner energy credits granted shall be based on the percentage of the electricity generated from the advanced cleaner energy technology. If a facility or system, such as a gasification facility using biomass as feedstock, qualifies as both an advanced cleaner energy system and a renewable energy system, at the owner's option, either an advanced cleaner energy credit or a renewable energy credit, but not both, may be granted for any given megawatt hour of electricity generated by the facility or system.

(2) An advanced cleaner energy credit expires at the earliest of the following times:

(a) When substituted for a renewable energy credit under section 27 or an energy optimization credit under section 77.

(b) 3 years after the end of the month in which the advanced cleaner energy credit was generated.

(3) Advanced cleaner energy credits may be traded, sold, or otherwise transferred.

(4) The commission shall establish an advanced cleaner energy credit certification and tracking program. The certification and tracking program may be contracted to and performed by a third party through a system of competitive bidding. The program shall include all of the following:

(a) A process to certify advanced cleaner energy systems, including all existing advanced cleaner energy systems operating on the effective date of this act, as eligible to receive advanced cleaner energy credits.

(b) A process for verifying that the operator of an advanced cleaner energy system is in compliance with state and federal law applicable to the operation of the advanced cleaner energy system when certification is granted. If an advanced cleaner energy system becomes noncompliant with state or federal law, advanced cleaner energy credits shall not be granted for advanced cleaner energy generated by that advanced cleaner energy system during the period of noncompliance.

(c) A method for determining the date on which an advanced cleaner energy credit is generated and valid for transfer.

(d) A method for transferring advanced cleaner energy credits.

(e) A method for ensuring that each advanced cleaner energy credit transferred is properly accounted for.

(f) Allowance for issuance, transfer, and use of advanced cleaner energy credits in electronic form.

(g) A method for ensuring that both a renewable energy credit and an advanced cleaner energy credit are not awarded for the same megawatt hour of electricity.

(5) An advanced cleaner energy credit purchased from an advanced cleaner energy system in this state is not required to be used in this state.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1045 Charges for electric provider's tariffs that permit recovery of incremental costs of compliance; calculation; report to residential customer in billing statement; values; determining long-term, life-cycle, levelized costs of building and operating and acquiring nonrenewable electric generating capacity and energy.

Sec. 45. (1) For an electric provider whose rates are regulated by the commission, the commission shall determine the appropriate charges for the electric provider's tariffs that permit recovery of the incremental cost of compliance subject to the retail rate impact limits set forth in subsection (2).

(2) An electric provider shall recover the incremental cost of compliance with the renewable energy standards by an itemized charge on the customer's bill for billing periods beginning not earlier than 90 days after the commission approves the electric provider's renewable energy plan under section 21 or 23 or determines under section 25 that the plan complies with this act. An electric provider shall not comply with the renewable energy standards to the extent that, as determined by the commission, recovery of the incremental cost of compliance will have a retail rate impact that exceeds any of the following:

- (a) \$3.00 per month per residential customer meter.
- (b) \$16.58 per month per commercial secondary customer meter.
- (c) \$187.50 per month per commercial primary or industrial customer meter.

(3) The retail rate impact limits of subsection (2) apply only to the incremental costs of compliance and do not apply to costs approved for recovery by the commission other than as provided in this act.

(4) The incremental cost of compliance shall be calculated for a 20-year period beginning with approval of the renewable energy plan and shall be recovered on a levelized basis.

(5) In its billing statements for a residential customer, each provider shall report to the residential customer all of the following in a format consistent with other information on the customer bill:

(a) An itemized monthly charge, expressed in dollars and cents, collected from the customer for implementing the renewable energy program requirements of this act. In the first bill issued after the close of the previous year, an electric provider shall notify each residential customer that the customer may be entitled to an income tax credit to offset some of the annual amounts collected for the renewable energy program.

(b) An itemized monthly charge, expressed in dollars and cents, collected from the customer for implementing the energy optimization program requirements of this act.

(c) An estimated monthly savings, expressed in dollars and cents, for that customer to reflect the reductions in the monthly energy bill produced by the energy optimization program under this act.

(d) An estimated monthly savings, expressed in dollars and cents, for that customer to reflect the long-term, life-cycle, levelized costs of building and operating new conventional coal-fired electric generating power plants avoided under this act as determined by the commission.

(e) The website address at which the commission's annual report under section 51 is posted.

(6) For the first year of the programs under this part, the values reported under subsection (5) shall be estimates by the commission. The values in following years shall be based on the provider's actual customer experiences. If the provider is unable to provide customer-specific information under subsection (5)(b) or (c), it shall instead specify the state average itemized charge or savings, as applicable, for residential customers. The provider shall make this calculation based on a method approved by the commission.

(7) In determining long-term, life-cycle, levelized costs of building and operating and acquiring nonrenewable electric generating capacity and energy for the purpose of subsection (5)(d), the commission shall consider historic and predicted costs of financing, construction, operation, maintenance, fuel supplies, environmental protection, and other appropriate elements of energy production. For purposes of this comparison, the capacity of avoided new conventional coal-fired electric generating facilities shall be expressed in megawatts and avoided new conventional coal-fired electricity generation shall be expressed in megawatt hours. Avoided costs shall be measured in cents per kilowatt hour.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1047 Cost of service to be recovered by electric provider; recovery of incremental costs of compliance; calculation; modification of revenue recovery mechanism; excess costs;

refund to customer classes; certain actual costs considered as costs of service.

Sec. 47. (1) Subject to the retail rate impact limits under section 45, the commission shall consider all actual costs reasonably and prudently incurred in good faith to implement a commission-approved renewable energy plan by an electric provider whose rates are regulated by the commission to be a cost of service to be recovered by the electric provider. Subject to the retail rate impact limits under section 45, an electric provider whose rates are regulated by the commission shall recover through its retail electric rates all of the electric provider's incremental costs of compliance during the 20-year period beginning when the electric provider's plan is approved by the commission and all reasonable and prudent ongoing costs of compliance during and after that period. The recovery shall include, but is not limited to, the electric provider's authorized rate of return on equity for costs approved under this section, which shall remain fixed at the rate of return and debt to equity ratio that was in effect in the electric provider's base rates when the electric provider's renewable energy plan was approved.

(2) Incremental costs of compliance shall be calculated as follows:

(a) Determine the sum of the following costs to the extent those costs are reasonable and prudent and not already approved for recovery in electric rates as of the effective date of this act:

(i) Capital, operating, and maintenance costs of renewable energy systems or advanced cleaner energy systems, including property taxes, insurance, and return on equity associated with an electric provider's renewable energy systems or advanced cleaner energy systems, including the electric provider's renewable energy portfolio established to achieve compliance with the renewable energy standards and any additional renewable energy systems or advanced cleaner energy systems, that are built or acquired by the electric provider to maintain compliance with the renewable energy standards during the 20-year period beginning when the electric provider's plan is approved by the commission.

(ii) Financing costs attributable to capital, operating, and maintenance costs of capital facilities associated with renewable energy systems or advanced cleaner energy systems used to meet the renewable energy standard.

(iii) Costs that are not otherwise recoverable in rates approved by the federal energy regulatory commission and that are related to the infrastructure required to bring renewable energy systems or advanced cleaner energy systems used to achieve compliance with the renewable energy standards on to the transmission system, including interconnection and substation costs for renewable energy systems or advanced cleaner energy systems used to meet the renewable energy standard.

(iv) Ancillary service costs determined by the commission to be necessarily incurred to ensure the quality and reliability of renewable energy or advanced cleaner energy used to meet the renewable energy standards, regardless of the ownership of a renewable energy system or advanced cleaner energy technology.

(v) Except to the extent the costs are allocated under a different subparagraph, all of the following:

(A) The costs of renewable energy credits purchased under this act.

(B) The costs of contracts described in section 33(1).

(vi) Expenses incurred as a result of state or federal governmental actions related to renewable energy systems or advanced cleaner energy systems attributable to the renewable energy standards, including changes in tax or other law.

(vii) Any additional electric provider costs determined by the commission to be necessarily incurred to ensure the quality and reliability of renewable energy or advanced cleaner energy used to meet the renewable energy standards.

(b) Subtract from the sum of costs not already included in electric rates determined under subdivision (a) the sum of the following revenues:

(i) Revenue derived from the sale of environmental attributes associated with the generation of renewable energy or advanced cleaner energy systems attributable to the renewable energy standards. Such revenue shall not be considered in determining power supply cost recovery factors under section 6j of 1939 PA 3, MCL 460.6j.

(ii) Interest on regulatory liabilities.

(iii) Tax credits specifically designed to promote renewable energy or advanced cleaner energy.

(iv) Revenue derived from the provision of renewable energy or advanced cleaner energy to retail electric customers subject to a power supply cost recovery clause under section 6j of 1939 PA 3, MCL 460.6j, of an electric provider whose rates are regulated by the commission. After providing an opportunity for a contested case hearing for an electric provider whose rates are regulated by the commission, the commission shall annually establish a price per megawatt hour. In addition, an electric provider whose rates are regulated by the commission may at any time petition the commission to revise the price. In setting the price per megawatt hour under this subparagraph, the commission shall consider factors including, but not limited to, projected

capacity, energy, maintenance, and operating costs; information filed under section 6j of 1939 PA 3, MCL 460.6j; and information from wholesale markets, including, but not limited to, locational marginal pricing. This price shall be multiplied by the sum of the number of megawatt hours of renewable energy and the number of megawatt hours of advanced cleaner energy used to maintain compliance with the renewable energy standard. The product shall be considered a booked cost of purchased and net interchanged power transactions under section 6j of 1939 PA 3, MCL 460.6j. For energy purchased by such an electric provider under a renewable energy contract or advanced cleaner energy contract, the price shall be the lower of the amount established by the commission or the actual price paid and shall be multiplied by the number of megawatt hours of renewable energy or advanced cleaner energy purchased. The resulting value shall be considered a booked cost of purchased and net interchanged power under section 6j of 1939 PA 3, MCL 460.6j.

(v) Revenue from wholesale renewable energy sales and advanced cleaner energy sales. Such revenue shall not be considered in determining power supply cost recovery factors under section 6j of 1939 PA 3, MCL 460.6j.

(vi) Any additional electric provider revenue considered by the commission to be attributable to the renewable energy standards.

(vii) Any revenues recovered in rates for renewable energy costs that are included under subdivision (a).

(3) The commission shall authorize an electric provider whose rates are regulated by the commission to spend in any given month more to comply with this act and implement an approved renewable energy plan than the revenue actually generated by the revenue recovery mechanism. An electric provider whose rates are regulated by the commission shall recover its commission approved pre-tax rate of return on regulatory assets during the appropriate period. An electric provider whose rates are regulated by the commission shall record interest on regulatory liabilities at the average short-term borrowing rate available to the electric provider during the appropriate period. Any regulatory assets or liabilities resulting from the recovery costs of renewable energy or advanced cleaner energy attributable to renewable energy standards through the power supply cost recovery clause under section 6j of 1939 PA 3, MCL 460.6j, shall continue to be reconciled under that section.

(4) If an electric provider's incremental costs of compliance in any given month during the 20-year period beginning when the electric provider's plan is approved by the commission are in excess of the revenue recovery mechanism as adjusted under section 49 and in excess of the balance of any accumulated reserve funds, subject to the minimum balance established under section 21, the electric provider shall immediately notify the commission. The commission shall promptly commence a contested case hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, and modify the revenue recovery mechanism so that the minimum balance is restored. However, if the commission determines that recovery of the incremental costs of compliance would otherwise exceed the maximum retail rate impacts specified under section 45, it shall set the revenue recovery mechanism for that electric provider to correspond to the maximum retail rate impacts. Excess costs shall be accrued and deferred for recovery. Not later than the expiration of the 20-year period beginning when the electric provider's plan is approved by the commission, for an electric provider whose rates are regulated by the commission, the commission shall determine the amount of deferred costs to be recovered under the revenue recovery mechanism and the recovery period, which shall not extend more than 5 years beyond the expiration of the 20-year period beginning when the electric provider's plan is approved by the commission. The recovery of excess costs shall be proportional to the retail rate impact limits in section 45 for each customer class. The recovery of excess costs alone, or, if begun before the expiration of the 20-year period, in combination with the recovery of incremental costs of compliance under the revenue recovery mechanism, shall not exceed the retail rate impact limits of section 45 for each customer class.

(5) If, at the expiration of the 20-year period beginning when the electric provider's plan is approved by the commission, an electric provider whose rates are regulated by the commission has a regulatory liability, the refund to customer classes shall be proportional to the amounts paid by those customer classes under the revenue recovery mechanism.

(6) After achieving compliance with the renewable energy standard for 2015, the actual costs reasonably and prudently incurred to continue to comply with this subpart both during and after the conclusion of the 20-year period beginning when the electric provider's plan is approved by the commission shall be considered costs of service. The commission shall determine a mechanism for an electric provider whose rates are regulated by the commission to recover these costs in its retail electric rates, subject to the retail rate impact limits in section 45. Remaining and future regulatory assets shall be recovered consistent with subsections (2) and (3) and section 49.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1049 Renewable cost reconciliation; commencement; contested case proceeding; discovery; modifications of revenue recovery mechanism; reconciliation of revenues with amounts actually expensed and projected; duties of commission; interest accrual.

Sec. 49. (1) This section applies only to an electric provider whose rates are regulated by the commission. Concurrent with the submission of each report under section 51, the commission shall commence an annual proceeding, to be known as a renewable cost reconciliation, for each electric provider whose rates are regulated by the commission. The renewable cost reconciliation proceeding shall be conducted as a contested case pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Reasonable discovery shall be permitted before and during the reconciliation proceeding to assist in obtaining evidence concerning reconciliation issues including, but not limited to, the reasonableness and prudence of expenditures and the amounts collected pursuant to the revenue recovery mechanism.

(2) At the renewable cost reconciliation, an electric provider may propose any necessary modifications of the revenue recovery mechanism to ensure the electric provider's recovery of its incremental cost of compliance with the renewable energy standards.

(3) The commission shall reconcile the pertinent revenues recorded and the allowance for the nonvolumetric revenue recovery mechanism with the amounts actually expensed and projected according to the electric provider's plan for compliance. The commission shall consider any issue regarding the reasonableness and prudence of expenses for which customers were charged in the relevant reconciliation period. In its order, the commission shall do all of the following:

(a) Make a determination of an electric provider's compliance with the renewable energy standards, subject to section 31.

(b) Adjust the revenue recovery mechanism for the incremental costs of compliance. The commission shall ensure that the retail rate impacts under this renewable cost reconciliation revenue recovery mechanism do not exceed the maximum retail rate impacts specified under section 45. The commission shall ensure that the recovery mechanism is projected to maintain a minimum balance of accumulated reserve so that a regulatory asset does not accrue.

(c) Establish the price per megawatt hour for renewable energy and advanced cleaner energy capacity and for renewable energy and advanced cleaner energy to be recovered through the power supply cost recovery clause under section 6j of 1939 PA 3, MCL 460.6j, as outlined in section 47(2)(b)(iv).

(d) Adjust, if needed, the minimum balance of accumulated reserve funds established under section 21.

(4) If an electric provider has recorded a regulatory liability in any given month during the 20-year period beginning when the electric provider's plan is approved by the commission, interest on the regulatory liability balance shall be accrued at the average short-term borrowing rate available to the electric provider during the appropriate period, and shall be used to fund incremental costs of compliance incurred in subsequent periods within the 20-year period beginning when the electric provider's plan is approved by the commission.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1051 Compliance with renewable energy standards; submission of annual report by each electric provider; information; submissions of report summary to customers of certain electric utilities; monitoring reports; submission of report to legislative committees; maintenance of report by department of labor and economic growth.

Sec. 51. (1) By a time determined by the commission, each electric provider shall submit to the commission an annual report that provides information relating to the actions taken by the electric provider to comply with the renewable energy standards. By that same time, a municipally-owned electric utility shall submit a copy of the report to the governing body of the municipally-owned electric utility, and a cooperative electric utility shall submit a copy of the report to its board of directors.

(2) An annual report under subsection (1) shall include all of the following information:

(a) The amount of electricity and renewable energy credits that the electric provider generated or acquired from renewable energy systems during the reporting period and the amount of renewable energy credits that the electric provider acquired, sold, traded, or otherwise transferred during the reporting period.

(b) The amount of electricity that the electric provider generated or acquired from advanced cleaner energy systems pursuant to this act during the reporting period.

(c) The capacity of each renewable energy system and advanced cleaner energy system owned, operated, or controlled by the electric provider, the total amount of electricity generated by each renewable energy system or advanced cleaner energy system during the reporting period, and the percentage of that total amount of electricity from each renewable energy system that was generated directly from renewable energy.

(d) Whether, during the reporting period, the electric provider began construction on, acquired, or placed into operation a renewable energy system or advanced cleaner energy system.

(e) Expenditures made in the past year and anticipated future expenditures to comply with this subpart.

(f) Any other information that the commission determines necessary.

(3) Concurrent with the submission of each report under subsection (1), a municipally-owned electric utility shall submit a summary of the report to its customers in their bills with a bill insert and to its governing body. Concurrent with the submission of each report under subsection (1), a cooperative electric utility shall submit a summary of the report to its members in a periodical issued by an association of rural electric cooperatives and to its board of directors. A municipally-owned electric utility or cooperative electric provider shall make a copy of the report available at its office and shall post a copy of the report on its website. A summary under this section shall indicate that a copy of the report is available at the office or website.

(4) The commission shall monitor reports submitted under subsection (1) and ensure that actions taken under this act by electric providers serving customers in the same distribution territory do not create an unfair competitive advantage for any of those electric providers.

(5) By February 15, 2011 and each year thereafter, the commission shall submit to the standing committees of the senate and house of representatives with primary responsibility for energy and environmental issues a report that does all of the following:

(a) Summarizes data collected under this section.

(b) Discusses the status of renewable energy and advanced cleaner energy in this state and the effect of this subpart and subpart B on electricity prices.

(c) For each of the different types of renewable energy sold at retail in this state, specifies the difference between the cost of the renewable energy and the cost of electricity generated from new conventional coal-fired electric generating facilities.

(d) Discusses how the commission is fulfilling the requirements of subsection (4).

(e) Evaluates whether this subpart has been cost-effective.

(f) Provides a comparison of the cost effectiveness of the methods of an electric utility with 1,000,000 or more retail customers in this state as of January 1, 2008 obtaining renewable energy credits under the options described in section 33.

(g) Describes the impact of this subpart on employment in this state. The commission shall consult with other appropriate agencies of the department of labor and economic growth in the development of this information.

(h) Describes the effect of the percentage limits under section 27(7) on the development of advanced cleaner energy.

(i) Makes any recommendations the commission may have concerning amendments to this subpart, including changes in the percentage limits under section 27(7), or changes in the definition of renewable energy resource or renewable energy system to reflect environmentally preferable technology.

(6) The department of labor and economic growth shall maintain on the department's website a copy of the commission's most recent report under subsection (5).

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1053 Failure to meet renewable energy credit standard by deadline; civil action; contested case; final order.

Sec. 53. (1) If an electric provider whose rates are regulated by the commission fails to meet a renewable energy credit standard by the applicable deadline, subject to any extensions under section 31, both of the following apply:

(a) The electric provider shall purchase sufficient renewable energy credits necessary to meet the renewable energy credit standard.

(b) The electric provider shall not recover from its ratepayers the cost of purchasing renewable energy credits under subdivision (a) if the commission finds that the electric provider did not make a good faith effort to meet the renewable energy standard, subject to any extensions under section 31.

(2) The attorney general or any customer of a cooperative electric utility that has elected to become

member-regulated under the electric cooperative member-regulation act, 2008 PA 167, MCL 460.31 to 460.39, may commence a civil action for injunctive relief against such a cooperative electric utility if the electric provider fails to meet the applicable requirements of this subpart or an order issued or rule promulgated under this subpart.

(3) An action under subsection (2) shall be commenced in the circuit court for the circuit in which the principal office of the cooperative electric utility that has elected to become member-regulated is located. An action shall not be filed under subsection (2) unless the prospective plaintiff has given the prospective defendant and the commission at least 60 days' written notice of the prospective plaintiff's intent to sue, the basis for the suit, and the relief sought. Within 30 days after the prospective defendant receives written notice of the prospective plaintiff's intent to sue, the prospective defendant and plaintiff shall meet and make a good faith attempt to determine if there is a credible basis for the action. If both parties agree that there is a credible basis for the action, the prospective defendant shall take all reasonable and prudent steps necessary to comply with the applicable requirements of this subpart within 90 days of the meeting.

(4) In issuing a final order in an action brought under subsection (2), the court may award costs of litigation, including reasonable attorney and expert witness fees, to the prevailing or substantially prevailing party.

(5) Upon receipt of a complaint by an alternative electric supplier's customer or on the commission's own motion, the commission may conduct a contested case to review allegations that the alternative electric supplier has violated this subpart or an order issued or rule promulgated under this subpart. If the commission finds, after notice and hearing, that an alternative electric supplier has violated this subpart or an order issued or rule promulgated under this subpart, the commission shall do 1 or more of the following:

(a) Revoke the license of the alternative electric supplier.

(b) Issue a cease and desist order.

(c) Order the alternative electric supplier to pay a civil fine of not less than \$5,000.00 or more than \$50,000.00 for each violation.

(6) Upon receipt of a complaint by any customer of a municipally-owned electric utility or upon the commission's own motion, the commission may review allegations that the municipally-owned electric utility has violated this subpart or an order issued or rule promulgated under this subpart. If the commission finds, after notice and hearing, that a municipally-owned electric utility has violated this subpart or an order issued or rule promulgated under this subpart, the commission shall advise the attorney general. The attorney general may commence a civil action for injunctive relief against the municipally-owned electric utility in the circuit court for the circuit in which the principal office of the municipally-owned electric utility is located.

(7) In issuing a final order in an action brought under subsection (6), the court may award costs of litigation, including reasonable attorney and expert witness fees, to the prevailing or substantially prevailing party.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

SUBPART B. ENERGY OPTIMIZATION

460.1071 Proposed energy optimization plan; filing; time period; goal; combining with renewable energy plan; provisions; limitation on expenditures.

Sec. 71. (1) A provider shall file a proposed energy optimization plan with the commission within the following time period:

(a) For a provider whose rates are regulated by the commission, 90 days after the commission enters a temporary order under section 171.

(b) For a cooperative electric utility that has elected to become member-regulated under the electric cooperative member regulation act, 2008 PA 167, MCL 460.31 to 460.39, or a municipally-owned electric utility, 120 days after the commission enters a temporary order under section 171.

(2) The overall goal of an energy optimization plan shall be to reduce the future costs of provider service to customers. In particular, an EO plan shall be designed to delay the need for constructing new electric generating facilities and thereby protect consumers from incurring the costs of such construction. The proposed energy optimization plan shall be subject to approval in the same manner as an electric provider's renewable energy plan under subpart A. A provider may combine its energy optimization plan with its renewable energy plan.

(3) An energy optimization plan shall do all of the following:

(a) Propose a set of energy optimization programs that include offerings for each customer class, including low income residential. The commission shall allow providers flexibility to tailor the relative amount of effort devoted to each customer class based on the specific characteristics of their service territory.

(b) Specify necessary funding levels.

(c) Describe how energy optimization program costs will be recovered as provided in section 89(2).

(d) Ensure, to the extent feasible, that charges collected from a particular customer rate class are spent on energy optimization programs for that rate class.

(e) Demonstrate that the proposed energy optimization programs and funding are sufficient to ensure the achievement of applicable energy optimization standards.

(f) Specify whether the number of megawatt hours of electricity or decatherms or MCFs of natural gas used in the calculation of incremental energy savings under section 77 will be weather-normalized or based on the average number of megawatt hours of electricity or decatherms or MCFs of natural gas sold by the provider annually during the previous 3 years to retail customers in this state. Once the plan is approved by the commission, this option shall not be changed.

(g) Demonstrate that the provider's energy optimization programs, excluding program offerings to low income residential customers, will collectively be cost-effective.

(h) Provide for the practical and effective administration of the proposed energy optimization programs. The commission shall allow providers flexibility in designing their energy optimization programs and administrative approach. A provider's energy optimization programs or any part thereof, may be administered, at the provider's option, by the provider, alone or jointly with other providers, by a state agency, or by an appropriate experienced nonprofit organization selected after a competitive bid process.

(i) Include a process for obtaining an independent expert evaluation of the actual energy optimization programs to verify the incremental energy savings from each energy optimization program for purposes of section 77. All such evaluations shall be subject to public review and commission oversight.

(4) Subject to subsection (5), an energy optimization plan may do 1 or more of the following:

(a) Utilize educational programs designed to alter consumer behavior or any other measures that can reasonably be used to meet the goals set forth in subsection (2).

(b) Propose to the commission measures that are designed to meet the goals set forth in subsection (1) and that provide additional customer benefits.

(5) Expenditures under subsection (4) shall not exceed 3% of the costs of implementing the energy optimization plan.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides:

"Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

In subdivisions (a) and (b) of subsection (1), the references to "section 171" evidently should read "section 191".

460.1073 Energy optimization plan; approval by commission.

Sec. 73. (1) A provider's energy optimization plan shall be filed, reviewed, and approved or rejected by the commission and enforced subject to the same procedures that apply to a renewable energy plan.

(2) The commission shall not approve a proposed energy optimization plan unless the commission determines that the EO plan meets the utility system resource cost test and is reasonable and prudent. In determining whether the EO plan is reasonable and prudent, the commission shall review each element and consider whether it would reduce the future cost of service for the provider's customers. In addition, the commission shall consider at least all of the following:

(a) The specific changes in customers' consumption patterns that the proposed EO plan is attempting to influence.

(b) The cost and benefit analysis and other justification for specific programs and measures included in a proposed EO plan.

(c) Whether the proposed EO plan is consistent with any long-range resource plan filed by the provider with the commission.

(d) Whether the proposed EO plan will result in any unreasonable prejudice or disadvantage to any class of customers.

(e) The extent to which the EO plan provides programs that are available, affordable, and useful to all customers.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1075 Energy optimization plan; exceeding standard; authorization for commensurate financial incentive; payment; limitation.

Sec. 75. An energy optimization plan of a provider whose rates are regulated by the commission may authorize a commensurate financial incentive for the provider for exceeding the energy optimization performance standard. Payment of any financial incentive authorized in the EO plan is subject to the approval of the commission. The total amount of a financial incentive shall not exceed the lesser of the following amounts:

- (a) 25% of the net cost reductions experienced by the provider's customers as a result of implementation of the energy optimization plan.
- (b) 15% percent of the provider's actual energy efficiency program expenditures for the year.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides:

"Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

In subdivision (b), "15% percent" evidently should read "15%".

460.1077 Energy savings; minimum energy optimization standards to be met by natural gas provider; determination of incremental energy savings; calculations; basis; substitution; limitations.

Sec. 77. (1) Except as provided in section 81 and subject to the sales revenue expenditure limits in section 89, an electric provider's energy optimization programs under this subpart shall collectively achieve the following minimum energy savings:

(a) Biennial incremental energy savings in 2008-2009 equivalent to 0.3% of total annual retail electricity sales in megawatt hours in 2007.

(b) Annual incremental energy savings in 2010 equivalent to 0.5% of total annual retail electricity sales in megawatt hours in 2009.

(c) Annual incremental energy savings in 2011 equivalent to 0.75% of total annual retail electricity sales in megawatt hours in 2010.

(d) Annual incremental energy savings in 2012, 2013, 2014, and 2015 and, subject to section 97, each year thereafter equivalent to 1.0% of total annual retail electricity sales in megawatt hours in the preceding year.

(2) If an electric provider uses load management to achieve energy savings under its energy optimization plan, the minimum energy savings required under subsection (1) shall be adjusted by an amount such that the ratio of the minimum energy savings to the sum of maximum expenditures under section 89 and the load management expenditures remains constant.

(3) A natural gas provider shall meet the following minimum energy optimization standards using energy efficiency programs under this subpart:

(a) Biennial incremental energy savings in 2008-2009 equivalent to 0.1% of total annual retail natural gas sales in decatherms or equivalent MCFs in 2007.

(b) Annual incremental energy savings in 2010 equivalent to 0.25% of total annual retail natural gas sales in decatherms or equivalent MCFs in 2009.

(c) Annual incremental energy savings in 2011 equivalent to 0.5% of total annual retail natural gas sales in decatherms or equivalent MCFs in 2010.

(d) Annual incremental energy savings in 2012, 2013, 2014, and 2015 and, subject to section 97, each year thereafter equivalent to 0.75% of total annual retail natural gas sales in decatherms or equivalent MCFs in the preceding year.

(4) Incremental energy savings under subsection (1) or (3) for the 2008-2009 biennium or any year thereafter shall be determined for a provider by adding the energy savings expected to be achieved during a 1-year period by energy optimization measures implemented during the 2008-2009 biennium or any year thereafter under any energy efficiency programs consistent with the provider's energy efficiency plan.

(5) For purposes of calculations under subsection (1) or (3), total annual retail electricity or natural gas sales in a year shall be based on 1 of the following at the option of the provider as specified in its energy optimization plan:

(a) The number of weather-normalized megawatt hours or decatherms or equivalent MCFs sold by the provider to retail customers in this state during the year preceding the biennium or year for which incremental energy savings are being calculated.

(b) The average number of megawatt hours or decatherms or equivalent MCFs sold by the provider during the 3 years preceding the biennium or year for which incremental energy savings are being calculated.

(6) For any year after 2012, an electric provider may substitute renewable energy credits associated with renewable energy generated that year from a renewable energy system constructed after the effective date of

this act, advanced cleaner energy credits other than credits from industrial cogeneration using industrial waste energy, load management that reduces overall energy usage, or a combination thereof for energy optimization credits otherwise required to meet the energy optimization performance standard, if the substitution is approved by the commission. The commission shall not approve a substitution unless the commission determines that the substitution is cost-effective and, if the substitution involves advanced cleaner energy credits, that the advanced cleaner energy system provides carbon dioxide emissions benefits. In determining whether the substitution of advanced cleaner energy credits is cost-effective compared to other available energy optimization measures, the commission shall consider the environmental costs related to the advanced cleaner energy system, including the costs of environmental control equipment or greenhouse gas constraints or taxes. The commission's determinations shall be made after a contested case hearing that includes consultation with the department of environmental quality on the issue of carbon dioxide emissions benefits, if relevant, and environmental costs.

(7) Renewable energy credits, advanced cleaner energy credits, load management that reduces overall energy usage, or a combination thereof shall not be used by a provider to meet more than 10% of the energy optimization standard. Substitutions for energy optimization credits shall be made at the following rates per energy optimization credit:

- (a) 1 renewable energy credit.
- (b) 1 advanced cleaner energy credit from plasma arc gasification.
- (c) 4 advanced cleaner energy credits other than from plasma arc gasification.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1079 Advanced cleaner energy systems; location.

Sec. 79. Advanced cleaner energy systems that are the source of the advanced cleaner energy credits used under section 77 shall be either located outside this state in the service territory of any electric provider that is not an alternative electric supplier or located anywhere in this state.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1081 Applicability of section to certain electric providers; establishment of alternative energy optimization standards; petition.

Sec. 81. (1) This section applies to electric providers that meet both of the following requirements:

- (a) Serve not more than 200,000 customers in this state.
- (b) Had average electric rates for residential customers using 1,000 kilowatt hours per month that are less than 75% of the average electric rates for residential customers using 1,000 kilowatt hours per month for all electric utilities in this state, according to the January 1, 2007, "comparison of average rates for MPSC-regulated electric utilities in Michigan" compiled by the commission.

(2) Beginning 2 years after a provider described in subsection (1) begins implementation of its energy optimization plan, the provider may petition the commission to establish alternative energy optimization standards. The petition shall identify the efforts taken by the provider to meet the electric provider energy optimization standards and demonstrate why the energy optimization standards cannot reasonably be met with energy optimization programs that are collectively cost-effective. If the commission finds that the petition meets the requirements of this subsection, the commission shall revise the energy optimization standards as applied to that electric provider to a level that can reasonably be met with energy optimization programs that are collectively cost-effective.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1083 Energy optimization credit; grant; expiration; carrying forward excess credits.

Sec. 83. (1) One energy optimization credit shall be granted to a provider for each megawatt hour of annual incremental energy savings achieved through energy optimization.

(2) An energy optimization credit expires as follows:

- (a) When used by a provider to comply with its energy optimization performance standard.
- (b) When substituted for a renewable energy credit under section 27.
- (c) As provided in subsection (3).

(3) If a provider's incremental energy savings in the 2008-2009 biennium or any year thereafter exceed the applicable energy optimization standard, the associated energy optimization credits may be carried forward and applied to the next year's energy optimization standard. However, all of the following apply:

(a) The number of energy optimization credits carried forward shall not exceed 1/3 of the next year's standard. Any energy optimization credits carried forward to the next year shall expire that year. Any remaining energy optimization credits shall expire at the end of the year in which the incremental energy savings were achieved, unless substituted, by an electric provider, for renewable energy credits under section 27.

(b) Energy optimization credits shall not be carried forward if, for its performance during the same biennium or year, the provider accepts a financial incentive under section 75. The excess energy optimization credits shall expire at the end of the year in which the incremental energy savings were achieved, unless substituted, by an electric provider, for renewable energy credits under section 27.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1085 Energy optimization credit not transferable; program for transferability of credits; recommendations.

Sec. 85. (1) An energy optimization credit is not transferable to another entity.

(2) The commission, in the 2011 report under section 97, shall make recommendations concerning a program for transferability of energy optimization credits.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1087 Certification and tracking program.

Sec. 87. The commission shall establish an energy optimization credit certification and tracking program. The certification and tracking program may be contracted to and performed by a third party through a system of competitive bidding. The program shall include all of the following:

(a) A determination of the date after which energy optimization must be achieved to be eligible for an energy optimization credit.

(b) A method for ensuring that each energy optimization credit substituted for a renewable energy credit under section 27 or carried forward under section 83 is properly accounted for.

(c) If the system is established by the commission, allowance for issuance and use of energy optimization credits in electronic form.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1089 Recovery of costs; limitation; capitalization costs; funding level for low income residential programs; authorization of natural gas provider to implement revenue decoupling mechanism; limitation on expenditures of total utility retail sales revenues; percentages.

Sec. 89. (1) The commission shall allow a provider whose rates are regulated by the commission to recover the actual costs of implementing its approved energy optimization plan. However, costs exceeding the overall funding levels specified in the energy optimization plan are not recoverable unless those costs are reasonable and prudent and meet the utility system resource cost test. Furthermore, costs for load management undertaken pursuant to an energy optimization plan are not recoverable as energy optimization program costs under this section, but may be recovered as described in section 95.

(2) Under subsection (1), costs shall be recovered from all natural gas customers and from residential electric customers by volumetric charges, from all other metered electric customers by per-meter charges, and from unmetered electric customers by an appropriate charge, applied to utility bills as an itemized charge.

(3) For the electric primary customer rate class customers of electric providers and customers of natural gas providers with an aggregate annual natural gas billing demand of more than 100,000 decatherms or equivalent MCFs for all sites in the natural gas utility's service territory, the cost recovery under subsection (1) shall not exceed 1.7% of total retail sales revenue for that customer class. For electric secondary customers and for residential customers, the cost recovery shall not exceed 2.2% of total retail sales revenue for those customer classes.

(4) Upon petition by a provider whose rates are regulated by the commission, the commission shall authorize the provider to capitalize all energy efficiency and energy conservation equipment, materials, and installation costs with an expected economic life greater than 1 year incurred in implementing its energy optimization plan, including such costs paid to third parties, such as customer rebates and customer incentives. The provider shall also propose depreciation treatment with respect to its capitalized costs in its energy optimization plan, and the commission shall order reasonable depreciation treatment related to these capitalized costs. A provider shall not capitalize payments made to an independent energy optimization program administrator under section 91.

(5) The established funding level for low income residential programs shall be provided from each customer rate class in proportion to that customer rate class's funding of the provider's total energy optimization programs. Charges shall be applied to distribution customers regardless of the source of their electricity or natural gas supply.

(6) The commission shall authorize a natural gas provider that spends a minimum of 0.5% of total natural gas retail sales revenues, including natural gas commodity costs, in a year on commission-approved energy optimization programs to implement a symmetrical revenue decoupling true-up mechanism that adjusts for sales volumes that are above or below the projected levels that were used to determine the revenue requirement authorized in the natural gas provider's most recent rate case. In determining the symmetrical revenue decoupling true-up mechanism utilized for each provider, the commission shall give deference to the proposed mechanism submitted by the provider. The commission may approve an alternative mechanism if the commission determines that the alternative mechanism is reasonable and prudent. The commission shall authorize the natural gas provider to decouple rates regardless of whether the natural gas provider's energy optimization programs are administered by the provider or an independent energy optimization program administrator under section 91.

(7) A natural gas provider or an electric provider shall not spend more than the following percentage of total utility retail sales revenues, including electricity or natural gas commodity costs, in any year to comply with the energy optimization performance standard without specific approval from the commission:

- (a) In 2009, 0.75% of total retail sales revenues for 2007.
- (b) In 2010, 1.0% of total retail sales revenues for 2008.
- (c) In 2011, 1.5% of total retail sales revenues for 2009.
- (d) In 2012 and each year thereafter, 2.0% of total retail sales revenues for the 2 years preceding.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1091 Alternative compliance payment.

Sec. 91. (1) Except for section 89(6), sections 71 to 89 do not apply to a provider that pays the following percentage of total utility sales revenues, including electricity or natural gas commodity costs, each year to an independent energy optimization program administrator selected by the commission:

- (a) In 2009, 0.75% of total retail sales revenues for 2007.
- (b) In 2010, 1.0% of total retail sales revenues for 2008.
- (c) In 2011, 1.5% of total retail sales revenues for 2009.
- (d) In 2012 and each year thereafter, 2.0% of total retail sales revenues for the 2 years preceding.

(2) An alternative compliance payment received from a provider by the energy optimization program administrator under subsection (1) shall be used to administer energy efficiency programs for the provider. Money unspent in a year shall be carried forward to be spent in the subsequent year.

(3) The commission shall allow a provider to recover an alternative compliance payment under subsection (1). This cost shall be recovered from residential customers by volumetric charges, from all other metered customers by per-meter charges, and from unmetered customers by an appropriate charge, applied to utility bills.

(4) An alternative compliance payment under subsection (1) shall only be used to fund energy optimization programs for that provider's customers. To the extent feasible, charges collected from a particular customer rate class and paid to the energy optimization program administrator under subsection (1) shall be devoted to energy optimization programs and services for that rate class.

(5) Money paid to the energy optimization program administrator under subsection (1) and not spent by the administrator that year shall remain available for expenditure the following year, subject to the requirements of subsection (4).

(6) The commission shall select a qualified nonprofit organization to serve as an energy optimization program administrator under this section, through a competitive bid process.

(7) The commission shall arrange for a biennial independent audit of the energy optimization program administrator.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1093 Self-directed energy optimization plan.

Sec. 93. (1) An eligible primary or secondary electric customer is exempt from charges the customer would otherwise incur under section 89 or 91 if the customer files with its electric provider and implements a self-directed energy optimization plan as provided in this section.

(2) Eligibility requirements for the exemption under subsection (1) are as follows:

(a) In 2009 or 2010, the customer must have had an annual peak demand in the preceding year of at least 2 megawatts at each site to be covered by the self-directed plan or 10 megawatts in the aggregate at all sites to be covered by the plan.

(b) In 2011, 2012, or 2013, the customer or customers must have had an annual peak demand in the preceding year of at least 1 megawatt at each site to be covered by the self-directed plan or 5 megawatts in the aggregate at all sites to be covered by the plan.

(c) In 2014 or any year thereafter, the customer or customers must have had an annual peak demand in the preceding year of at least 1 megawatt in the aggregate at all sites to be covered by the self-directed plan.

(3) The commission shall by order establish the rates, terms, and conditions of service for customers related to this subpart.

(4) The commission shall by order do all of the following:

(a) Require a customer to utilize the services of an energy optimization service company to develop and implement a self-directed plan. This subdivision does not apply to a customer that had an annual peak demand in the preceding year of at least 2 megawatts at each site to be covered by the self-directed plan or 10 megawatts in the aggregate at all sites to be covered by the self-directed plan.

(b) Provide a mechanism to recover from customers under subdivision (a) the costs for provider level review and evaluation.

(c) Provide a mechanism to cover the costs of the low income energy optimization program under section 89.

(5) All of the following apply to a self-directed energy optimization plan under subsection (1):

(a) The self-directed plan shall be a multiyear plan for an ongoing energy optimization program.

(b) The self-directed plan shall provide for aggregate energy savings that for each year meet or exceed the energy optimization performance standards based on the electricity purchases in the previous year for the site or sites covered by the self-directed plan.

(c) Under the self-directed plan, energy optimization shall be calculated based on annual electricity usage. Annual electricity usage shall be normalized so that none of the following are included in the calculation of the percentage of incremental energy savings:

(i) Changes in electricity usage because of changes in business activity levels not attributable to energy optimization.

(ii) Changes in electricity usage because of the installation, operation, or testing of pollution control equipment.

(d) The self-directed plan shall specify whether electricity usage will be weather-normalized or based on the average number of megawatt hours of electricity sold by the electric provider annually during the previous 3 years to retail customers in this state. Once the self-directed plan is submitted to the provider, this option shall not be changed.

(e) The self-directed plan shall outline how the customer intends to achieve the incremental energy savings specified in the self-directed plan.

(6) A self-directed energy optimization plan shall be incorporated into the relevant electric provider's energy optimization plan. The self-directed plan and information submitted by the customer under subsection (9) are confidential and exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. Projected energy savings from measures implemented under a self-directed plan shall be attributed to the relevant provider's energy optimization programs for the purposes of determining annual incremental energy savings achieved by the provider under section 77 or 81, as applicable.

(7) Once a customer begins to implement a self-directed plan at a site covered by the self-directed plan, that site is exempt from energy optimization program charges under section 89 or 91 and is not eligible to participate in the relevant electric provider's energy optimization programs.

(8) A customer implementing a self-directed energy optimization plan under this section shall submit to the

customer's electric provider every 2 years a brief report documenting the energy efficiency measures taken under the self-directed plan during that 2-year period, and the corresponding energy savings that will result. The report shall provide sufficient information for the provider and the commission to monitor progress toward the goals in the self-directed plan and to develop reliable estimates of the energy savings that are being achieved from self-directed plans. A customer shall promptly notify the provider if the customer fails to achieve incremental energy savings as set forth in its self-directed plan for a year that will be the first year covered by the next biannual report. If a customer submitting a report or notice under this subsection wishes to amend its self-directed plan, the customer shall submit with the report or notice an amended self-directed plan. A report under this subsection shall be accompanied by an affidavit from a knowledgeable official of the customer that the information in the report is true and correct to the best of the official's knowledge and belief. If the customer has retained an independent energy optimization service company, the requirements of this subsection shall be met by the energy optimization service company.

(9) An electric provider shall provide an annual report to the commission that identifies customers implementing self-directed energy optimization plans and summarizes the results achieved cumulatively under those self-directed plans. The commission may request additional information from the electric provider. If the commission has sufficient reason to believe the information is inaccurate or incomplete, it may request additional information from the customer to ensure accuracy of the report.

(10) If the commission determines after a contested case hearing that the minimum energy optimization goals under subsection (5)(b) have not been achieved at the sites covered by a self-directed plan, in aggregate, the commission shall order the customer or customers collectively to pay to this state an amount calculated as follows:

(a) Determine the proportion of the shortfall in achieving the minimum energy optimization goals under subsection (5)(b).

(b) Multiply the figure under subdivision (a) by the energy optimization charges from which the customer or customers collectively were exempt under subsection (1).

(c) Multiply the product under subdivision (b) by a number not less than 1 or greater than 2, as determined by the commission based on the reasons for failure to meet the minimum energy optimization goals.

(11) If a customer has submitted a self-directed plan to an electric provider, the customer, the customer's energy optimization service company, if applicable, or the electric provider shall provide a copy of the self-directed plan to the commission upon request.

(12) By September 1, 2010, following a public hearing, the commission shall establish an approval process for energy optimization service companies. The approval process shall ensure that energy optimization service companies have the expertise, resources, and business practices to reliably provide energy optimization services that meet the requirements of this section. The commission may adopt by reference the past or current standards of a national or regional certification or licensing program for energy optimization service companies. However, the approval process shall also provide an opportunity for energy optimization service companies that are not recognized by such a program to be approved by posting a bond in an amount determined by the commission and meeting any other requirements adopted by the commission for the purposes of this subsection. The approval process for energy optimization service companies shall require adherence to a code of conduct governing the relationship between energy optimization service companies and electric providers.

(13) The department of labor and economic growth shall maintain on the department's website a list of energy optimization service companies approved under subsection (12).

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1095 Duties and authority of commission.

Sec. 95. (1) The commission shall do all of the following:

(a) Promote load management in appropriate circumstances.

(b) Actively pursue increasing public awareness of load management techniques.

(c) Engage in regional load management efforts to reduce the annual demand for energy whenever possible.

(d) Work with residential, commercial, and industrial customers to reduce annual demand and conserve energy through load management techniques and other activities it considers appropriate. The commission shall file a report with the legislature by December 31, 2010 on the effort to reduce peak demand. The report shall also include any recommendations for legislative action concerning load management that the commission considers necessary.

(2) The commission may allow a provider whose rates are regulated by the commission to recover costs for load management undertaken pursuant to an energy optimization plan through base rates as part of a proceeding under section 6 of 1939 PA 3, MCL 460.6, if the costs are reasonable and prudent and meet the utility systems resource cost test.

(3) The commission shall do all of the following:

- (a) Promote energy efficiency and energy conservation.
- (b) Actively pursue increasing public awareness of energy conservation and energy efficiency.
- (c) Actively engage in energy conservation and energy efficiency efforts with providers.
- (d) Engage in regional efforts to reduce demand for energy through energy conservation and energy efficiency.

(e) By November 30, 2009, and each year thereafter, submit to the standing committees of the senate and house of representatives with primary responsibility for energy and environmental issues a report on the effort to implement energy conservation and energy efficiency programs or measures. The report may include any recommendations of the commission for energy conservation legislation.

(4) This subpart does not limit the authority of the commission, following an integrated resource plan proceeding and as part of a rate-making process, to allow a provider whose rates are regulated by the commission to recover for additional prudent energy efficiency and energy conservation measures not included in the provider's energy optimization plan if the provider has met the requirements of the energy optimization program.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1097 Compliance with energy optimization standards; reports.

Sec. 97. (1) By a time determined by the commission, each provider shall submit to the commission an annual report that provides information relating to the actions taken by the provider to comply with the energy optimization standards. By that same time, a municipally-owned electric utility shall submit a copy of the report to the governing body of the municipally-owned electric utility, and a cooperative electric utility shall submit a copy of the report to its board of directors.

(2) An annual report under subsection (1) shall include all of the following information:

- (a) The number of energy optimization credits that the provider generated during the reporting period.
- (b) Expenditures made in the past year and anticipated future expenditures to comply with this subpart.
- (c) Any other information that the commission determines necessary.

(3) Concurrent with the submission of each report under subsection (1), a municipally-owned electric utility shall submit a summary of the report to its customers in their bills with a bill insert and to its governing body. Concurrent with the submission of each report under subsection (1), a cooperative electric utility shall submit a summary of the report to its members in a periodical issued by an association of rural electric cooperatives and to its board of directors. A municipally-owned electric utility or cooperative electric provider shall make a copy of the report available at its office and shall post a copy of the report on its website. A summary under this section shall indicate that a copy of the report is available at the office or website.

(4) Not later than 1 year after the effective date of this act, the commission shall submit a report on the potential rate impacts on all classes of customers if the electric providers whose rates are regulated by the commission decouple rates. The report shall be submitted to the standing committees of the senate and house of representatives with primary responsibility for energy and environmental issues. The commission's report shall review whether decoupling would be cost-effective and would reduce the overall consumption of fossil fuels in this state.

(5) By October 1, 2010, the commission shall submit to the committees described in subsection (4) any recommendations for legislative action to increase energy conservation and energy efficiency based on reports under subsection (1), the energy optimization plans approved under section 89, and the commission's own investigation. By March 1, 2013, the commission shall submit to those committees a report on the progress of electric providers in achieving reductions in energy use. The commission may use an independent evaluator to review the submissions by electric providers.

(6) By February 15, 2011 and each year thereafter and by September 30, 2015, the commission shall submit to the committees described in subsection (4) a report that evaluates and determines whether this subpart and subpart A have each been cost-effective and makes recommendations to the legislature. The report shall be combined with any concurrent report by the commission under section 51.

(7) The report required by September 30, 2015 under subsection (6) shall also review the opportunities for

additional cost-effective energy optimization programs and make any recommendations the commission may have for legislation providing for the continuation, expansion, or reduction of energy optimization standards. That report shall also include the commission's determinations of all of the following:

(a) The percentage of total energy savings required by the energy optimization standards that have actually been achieved by each electric provider and by all electric providers cumulatively.

(b) The percentage of total energy savings required by the energy optimization standards that have actually been achieved by each natural gas provider and by all natural gas providers cumulatively.

(c) For each provider, whether that provider's program under this subpart has been cost-effective.

(8) If the commission determines in its report required by September 30, 2015 under subsection (6) or determines subsequently that a provider's energy optimization program under this subpart has not been cost-effective, the provider's program is suspended beginning 180 days after the date of the report or subsequent determination. If a provider's energy optimization program is suspended under this subsection, both of the following apply:

(a) The provider shall maintain cumulative incremental energy savings in megawatt hours or decatherms or equivalent MCFs in subsequent years at the level actually achieved during the year preceding the year in which the commission's determination is made.

(b) The provider shall not impose energy optimization charges in subsequent years except to the extent necessary to recover unrecovered energy optimization expenses incurred under this subpart before suspension of the provider's program.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

SUBPART C. MISCELLANEOUS

460.1111 Municipally-owned electric utilities; new authority not granted to commission.

Sec. 111. This part does not provide the commission with new authority with respect to municipally-owned electric utilities except to the extent expressly provided in this act.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1113 Pollution control equipment; use of electricity or natural gas in installation, operation, or testing; exemption.

Sec. 113. Notwithstanding any other provision of this part, electricity or natural gas used in the installation, operation, or testing of any pollution control equipment is exempt from the requirements of, and calculations of compliance required under, this part.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."